

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

CIVIL NO. 3:09CV310  
(3:00CR73)

JAMES E. DAVIS,	)	
	)	
Petitioner,	)	
	)	
Vs.	)	<u>ORDER OF DISMISSAL</u>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

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**THIS MATTER** is before the Court on Petitioner's motion to defer future payments on his restitution balance until his release from prison, received June 9, 2009; another motion to defer his restitution payments until his release, received July 16, 2009; and his petition for a writ of *quo warranto* to defer his restitution payments, received July 20, 2009.

The Court construes these motions collectively as a petition under 28 U.S.C. § 2241 since they only challenge[ ] the implementation of the restitution portion of his sentence." ***United States v. Childs, 126 F. App'x 96, 97 (4<sup>th</sup> Cir. 2005)***. As such, the petition must be brought in the district in which the Petitioner is currently incarcerated. Therefore, this Court must

make a determination whether to transfer this action to the district court of Petitioner's confinement or dismiss the action without prejudice to refiling the petition in the appropriate district court. *Id.* The Court finds that the interests of justice would best be served by dismissing this action without prejudice and permitting the Petitioner to refile same in the appropriate district court.

**IT IS, THEREFORE, ORDERED** that this action is hereby  
**DISMISSED WITHOUT PREJUDICE.**

Signed: August 3, 2009



Lacy H. Thornburg  
United States District Judge

